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By: **Delegates Zirkin, Bromwell, Cardin, Doory, Dumais, Gutierrez,  
Hennessy, Menes, Morhaim, and Vallario**

Introduced and read first time: February 2, 2004

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **State Police - Facility Security**

3 FOR the purpose of requiring owners, lessees, and operators of certain facilities  
4 involving certain hazardous materials to study and implement certain safety  
5 measures on a periodic basis; requiring those persons to implement certain  
6 security measures for certain facilities; requiring certain reporting of certain  
7 measures to the Department of State Police and certain other State and local  
8 units; requiring the Department to approve a certain code or set of standards;  
9 providing for the confidentiality of certain documents; establishing certain  
10 penalties for violations of this Act; defining certain terms; providing that this  
11 Act does not affect the availability of other penalties and remedies; requiring the  
12 Department to adopt certain regulations by a certain date in consultation with  
13 certain units; providing that this Act does not apply in local jurisdictions that  
14 adopt standards that are at least as stringent as certain standards required by  
15 this Act and work in consultation with the Department in regard to certain  
16 security measures; establishing a Task Force on the Security of Hazardous  
17 Materials; providing for the membership of the Task Force; requiring the  
18 Governor to appoint a chairman of the Task Force; requiring the Department to  
19 provide staff for the Task Force; providing that a member of the Task Force may  
20 not receive compensation, but is entitled to a certain reimbursement;  
21 establishing the duties of the Task Force; providing that deliberations and  
22 documents of the Task Force are confidential and shall be treated in a certain  
23 manner; requiring the Task Force to report to the Governor and the General  
24 Assembly on or before a certain date; establishing that this Act is not intended  
25 to affect certain abilities of police employees to take certain actions; providing a  
26 certain exception for certain local jurisdictions; making the provisions of this Act  
27 severable; and generally relating to security of controlled hazardous substance  
28 facilities.

29 BY adding to  
30 Article - Public Safety  
31 Section 2-801 through 2-808, inclusive, to be under the new subtitle "Subtitle  
32 8. Chemical Facility Security"  
33 Annotated Code of Maryland

1 (2003 Volume)

2 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
3 MARYLAND, That the Laws of Maryland read as follows:

4 **Article - Public Safety**

5 SUBTITLE 8. CHEMICAL FACILITY SECURITY.

6 2-801.

7 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
8 INDICATED.

9 (B) "FACILITY" MEANS A LOCATION IN WHICH A HAZARDOUS MATERIAL IS  
10 STORED, DISPENSED, USED, OR HANDLED.

11 (C) "HAZARDOUS MATERIAL" MEANS A REGULATED SUBSTANCE AS DEFINED  
12 IN 40 C.F.R. 68.130 IN EXCESS OF THE THRESHOLD QUANTITY SPECIFIED IN THAT  
13 REGULATION.

14 (D) "LOCAL ORGANIZATION FOR EMERGENCY MANAGEMENT" HAS THE  
15 MEANING STATED IN § 14-101 OF THIS ARTICLE.

16 (E) "MEMA" HAS THE MEANING STATED IN § 14-101 OF THIS ARTICLE.

17 2-802.

18 (A) THIS SUBTITLE APPLIES TO ANY PERSON WHO OWNS, OPERATES,  
19 MAINTAINS, OR CAUSES TO OPERATE OR MAINTAIN A FACILITY IN THIS STATE.

20 (B) THIS SUBTITLE DOES NOT APPLY IN A LOCAL JURISDICTION THAT:

21 (1) ADOPTS STANDARDS THAT ARE AT LEAST AS STRINGENT AS THE  
22 STANDARDS REQUIRED UNDER THIS SUBTITLE; AND

23 (2) WORKS IN CONSULTATION WITH THE DEPARTMENT IN REGARD TO  
24 SECURITY MEASURES REQUIRED UNDER THIS SUBTITLE.

25 2-803.

26 (A) A PERSON WHO IS SUBJECT TO THIS SUBTITLE SHALL MAINTAIN, STORE,  
27 AND HANDLE ALL HAZARDOUS MATERIAL IN A REASONABLY SECURE AND PRUDENT  
28 MANNER IN ORDER TO PREVENT EXPOSURE OR OTHER DANGER.

29 (B) ON OR BEFORE JANUARY 1, 2006, AND AT LEAST EVERY 3 YEARS  
30 THEREAFTER, IN CONSULTATION WITH THE DEPARTMENT, MEMA, AND WITH THE  
31 APPROPRIATE LOCAL ORGANIZATIONS FOR EMERGENCY MANAGEMENT, THE  
32 PERSON SUBJECT TO THIS SUBTITLE SHALL ANALYZE THE SECURITY OF THE

1 FACILITY AND SHALL IMPLEMENT IMPROVEMENTS, INCLUDING ANY CHANGES THAT  
2 ARE NECESSARY TO SATISFY THE REQUIREMENTS OF THIS SUBTITLE.

3 (C) THE PERSON SUBJECT TO THIS SUBTITLE SHALL INFORM THE  
4 DEPARTMENT, THE LOCAL GOVERNMENT, AND APPROPRIATE STATE AND LOCAL  
5 EMERGENCY RESPONSE UNITS OF ANY MEASURES TAKEN OR PLANNED TO  
6 IMPLEMENT THIS SUBTITLE AT THE FACILITY.

7 (D) THE ANALYSES PREPARED UNDER SUBSECTION (B) OF THIS SECTION, THE  
8 NOTIFICATIONS UNDER SUBSECTION (C) OF THIS SECTION, OR DOCUMENTS  
9 PREPARED UNDER § 2-805 OF THIS SUBTITLE TO COMPLY WITH THOSE SUBSECTIONS,  
10 AND THEIR SUPPORTING DOCUMENTS ARE CONFIDENTIAL AND ARE NOT PUBLIC  
11 DOCUMENTS THAT MAY BE DISCLOSED WITHOUT PRIOR WRITTEN PERMISSION OF  
12 THE PERSON SUBJECT TO THIS SUBTITLE IN ACCORDANCE WITH TITLE 10, SUBTITLE  
13 6 OF THE STATE GOVERNMENT ARTICLE.

14 2-804.

15 A PERSON WHO IS SUBJECT TO THIS SUBTITLE SHALL:

16 (1) PROHIBIT UNAUTHORIZED ACCESS TO THE PROPERTY ON WHICH  
17 THE FACILITY IS LOCATED;

18 (2) MONITOR THE PROPERTY, THE FACILITY, AND THE MEANS OF  
19 ACCESS; AND

20 (3) SAFEGUARD THE PROPERTY WITH PROTECTIVE MEASURES IN  
21 ACCORDANCE WITH THE REQUIREMENTS OF THIS SUBTITLE.

22 2-805.

23 (A) THE DEPARTMENT SHALL APPROVE A NATIONAL INDUSTRY SECURITY  
24 CODE OR SET OF STANDARDS FOR COMPLIANCE WITH THIS SUBTITLE IF THE CODE  
25 OR SET OF STANDARDS REQUIRES:

26 (1) PRIORITIZATION AND PERIODIC ANALYSIS, USING ACCEPTED  
27 METHODOLOGIES, OF POTENTIAL SECURITY THREATS, VULNERABILITIES, AND  
28 CONSEQUENCES;

29 (2) DEVELOPMENT AND IMPLEMENTATION OF SECURITY MEASURES  
30 COMMENSURATE WITH RISKS;

31 (3) DOCUMENTATION OF SECURITY MANAGEMENT PROGRAMS,  
32 PROCESSES, AND PROCEDURES;

33 (4) TRAINING, DRILLS, AND GUIDANCE FOR EMPLOYEES, CONTRACTORS,  
34 SERVICE PROVIDERS, AND OTHERS, AS APPROPRIATE, TO ENHANCE AWARENESS AND  
35 CAPABILITY;

1 (5) COMMUNICATIONS, DIALOGUE, AND EXCHANGE OF INFORMATION  
2 WITH EMPLOYEES, COMMUNITIES, AND GOVERNMENT AGENCIES AND OFFICIALS;

3 (6) INTERNAL AUDITS TO ASSESS SECURITY PROGRAMS AND  
4 PROCESSES AND THE IMPLEMENTATION OF CORRECTIVE MEASURES; AND

5 (7) THIRD-PARTY VERIFICATION THAT OWNERS AND OPERATORS HAVE  
6 IMPLEMENTED THE PHYSICAL SECURITY MEASURES THAT HAVE BEEN IDENTIFIED  
7 UNDER THE REQUIRED PERIODIC ANALYSIS OF POTENTIAL SECURITY THREATS,  
8 VULNERABILITIES, AND CONSEQUENCES.

9 (B) A PERSON WHO IS SUBJECT TO THIS SUBTITLE IS DEEMED TO BE IN  
10 COMPLIANCE WITH THIS SUBTITLE AND THE REGULATIONS ADOPTED UNDER THIS  
11 SUBTITLE IF:

12 (1) THE PERSON IMPLEMENTS A NATIONAL INDUSTRY SECURITY CODE  
13 OR SET OF STANDARDS THAT IS APPROVED BY THE DEPARTMENT;

14 (2) THE PERSON CONSULTS WITH THE DEPARTMENT, MEMA, AND WITH  
15 THE APPROPRIATE LOCAL ORGANIZATIONS FOR EMERGENCY MANAGEMENT IN  
16 IMPLEMENTING AND REVIEWING THE IMPLEMENTATION OF THE CODE OR SET OF  
17 STANDARDS;

18 (3) THE PERSON INFORMS THE DEPARTMENT, THE LOCAL  
19 GOVERNMENT, AND APPROPRIATE STATE AND LOCAL EMERGENCY RESPONSE UNITS  
20 OF MEASURES TAKEN OR PLANNED IN ACCORDANCE WITH § 2-803(C) OF THIS  
21 SUBTITLE; AND

22 (4) THE PERSON MEETS THE REQUIREMENTS UNDER § 2-804 OF THIS  
23 SUBTITLE.

24 2-806.

25 (A) A PERSON WHO VIOLATES THIS SUBTITLE OR ANY REGULATION ADOPTED  
26 UNDER THIS SUBTITLE IS SUBJECT TO:

27 (1) FOR A FIRST VIOLATION, A CIVIL PENALTY NOT EXCEEDING \$5,000;  
28 OR

29 (2) FOR A SUBSEQUENT VIOLATION, A CIVIL PENALTY NOT EXCEEDING  
30 \$10,000.

31 (B) EACH DAY THAT A VIOLATION CONTINUES IS A SEPARATE VIOLATION.

32 2-807.

33 NOTHING IN THIS SUBTITLE MAY BE CONSTRUED TO LIMIT THE AVAILABILITY  
34 OF ANY OTHER PENALTY OR REMEDY CONCERNING A FACILITY.

1 2-808.

2 (A) ON OR BEFORE JANUARY 1, 2005, THE DEPARTMENT SHALL ADOPT  
3 REGULATIONS TO IMPLEMENT THIS SUBTITLE.

4 (B) IN DEVELOPING THE REGULATIONS UNDER THIS SECTION, THE  
5 DEPARTMENT SHALL CONSULT WITH MEMA, THE SECRETARY OF THE  
6 ENVIRONMENT, THE PRESIDENT OF THE MARYLAND STATE FIREMEN'S  
7 ASSOCIATION, AND THE ASSISTANT COMMISSIONER FOR OCCUPATIONAL SAFETY  
8 AND HEALTH ADMINISTRATION OF THE DEPARTMENT OF LABOR, LICENSING, AND  
9 REGULATION.

10 SECTION 2. AND BE IT FURTHER ENACTED, That:

11 (a) There is a Task Force on the Security of Hazardous Materials.

12 (b) The Task Force consists of the following members:

13 (1) two members of the Senate of Maryland, appointed by the President  
14 of the Senate;

15 (2) two members of the House of Delegates, appointed by the Speaker of  
16 the House;

17 (3) the Secretary of State Police, or the Secretary's designee;

18 (4) the Mayor of Baltimore City, or the Mayor's designee;

19 (5) the Police Commissioner of Baltimore City, or the Commissioner's  
20 designee;

21 (6) the President of the Maryland State Firemen's Association, or the  
22 President's designee;

23 (7) the Executive Director of the Maryland Port Administration, or the  
24 Executive Director's designee;

25 (8) the Director of the Maryland Emergency Management Agency, or the  
26 Director's designee;

27 (9) the Secretary of Transportation; and

28 (10) the following members appointed by the Governor:

29 (i) a designee to represent homeland security interests in the  
30 State;

31 (ii) two representatives of industries operating railroads or other  
32 common carriers in the State;

33 (iii) one representative of volunteer firefighters;

- 1 (iv) two representatives from local emergency management;
- 2 (v) one representative from the Association of Maryland Hospitals  
3 and Health Systems;
- 4 (vi) one representative from an environmental group;
- 5 (vii) one representative of the chemical industry; and
- 6 (viii) three members of the general public.

7 (c) The Governor shall designate the chairman of the Task Force.

8 (d) The Department of State Police shall provide staff for the Task Force.

9 (e) A member of the Task Force:

10 (1) may not receive compensation; but

11 (2) is entitled to reimbursement for expenses under the Standard State  
12 Travel Regulations, as provided in the State budget.

13 (f) The Task Force shall make recommendations regarding hazardous  
14 materials security at rail lines, rail yards, and other storage facilities and  
15 transportation routes.

16 (g) The deliberations and documents of the Task Force are confidential and  
17 shall be treated in the same manner as analyses and documents under § 2-803(d) of  
18 the Public Safety Article.

19 (h) The Task Force shall report its recommendations to the Governor and,  
20 subject to § 2-1246 of the State Government Article, the General Assembly on or  
21 before December 15, 2004.

22 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is not intended to  
23 affect the ability of police employees to take any necessary actions to protect the  
24 citizens of the State from a situation involving hazardous materials.

25 SECTION 4. AND BE IT FURTHER ENACTED, That if any provision of this  
26 Act or the application thereof to any person or circumstance is held invalid for any  
27 reason in a court of competent jurisdiction, the invalidity does not affect other  
28 provisions or any other application of this Act which can be given effect without the  
29 invalid provision or application, and for this purpose the provisions of this Act are  
30 declared severable.

31 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take  
32 effect October 1, 2004.